



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: Leonard G. Cooke, Director
Department of Criminal Justice Services

FROM: James Towey
Assistant Attorney General

DATE: May 18, 2004

SUBJECT: Regulations for the implementation of Virginia Code §§ 19.2-310.2:1 and 19.2-310.3:1, requiring DNA analysis upon arrest for all violent felonies and certain burglaries.

CC: Dr. Paul Ferrara, Director
Division of Forensic Science

In response to a request from the Division of Forensic Science ("Division") of the Department of Criminal Justice Services ("Department"), I have reviewed the proposed regulations, 6 VAC 20-210-10 *et seq.*, relating to DNA analysis upon arrest for all violent felonies and certain burglaries. The proposed regulations will provide necessary guidance to agencies now responsible, pursuant to Virginia Code §§ 19.2-310.2:1 and 19.2-310.3:1, for collecting DNA samples from persons arrested for any violent felony and for certain burglaries. Virginia Code § 9.1-102(1) authorizes the Department to adopt regulations for the administration of any provisions of the Virginia Code as they relate to the responsibilities of the Division. The collection of such samples relate to the responsibilities of the Division as they will be sent to the Division for testing and submission to the DNA data bank. Further, § 19.2-310.3:1 expressly provides that the samples shall be taken in accordance with procedures adopted by the Division. Accordingly, upon review of the aforesaid regulations, and in accordance with Executive Order 21 (2002), I find the proposed regulations to be constitutional, consistent with the authority granted by § 9.1-102(1) of the Code of Virginia, and in conformity with existing statutory provisions.

Please note that this memorandum is intended to provide legal interpretations and legal advice, not policy advice. To the extent that this communication may advise you that certain action is lawful, the decision

whether to take such action remains a policy decision within the discretion of your agency and this communication should not be construed as a comment for or against the merits of such action.